

IN THE DISTRICT COURT OF THE UNITED STATES  
 FOR THE DISTRICT OF SOUTH CAROLINA  
 FLORENCE DIVISION

|                                       |   |                                    |
|---------------------------------------|---|------------------------------------|
| JERRY SHEPPARD,                       | ) | Civil Action No. 4:07-0428-MBS-TER |
|                                       | ) |                                    |
| Plaintiff,                            | ) |                                    |
|                                       | ) |                                    |
| VS.                                   | ) | ) REPORT AND RECOMMENDATION        |
| MICHAEL PETTIFORD, WARDEN;            | ) |                                    |
| LAVETTE PEEPLES, CORRECTIONAL OFFICER | ) |                                    |
| JOSE ESTRELLA, SUPERVISORY CHAPLAIN,  | ) |                                    |
|                                       | ) |                                    |
| Defendants.                           | ) |                                    |
|                                       | ) |                                    |

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Plaintiff, appearing *pro se*, filed this action under 42 U.S.C. § 1983<sup>1</sup> on July 28, 2005, alleging that his constitutional rights were violated.

On October 26, 2007, plaintiff filed a motion for default judgment asserting defendants had failed to file a response to his complaint. Plaintiff asserts that defendants were served with the complaint and summons on or about July 8, 2007, and filed for an extension of time on August 9, 2007. Plaintiff alleges defendants failed to comply with the court's order of extension giving defendants until September 10, 2007, to file a response. (Document #28).

Defendants filed a response in opposition asserting the Court granted their motion for an extension of time to respond until September 10, 2007. Defendants contend they filed an answer on September 10, 2007, and are not in default.

A review of the docket report reveals that on August 9, 2007, defendants filed a motion for

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<sup>1</sup>All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d),DSC. Because this is a dispositive motion, the report and recommendation is entered for review by the District Judge.

extension of time to file an answer or otherwise plead. On August 20, 2007, an Order was entered granting defendants' motion for extension and giving defendants until September 10, 2007, to file an answer. (Document #23). Defendants filed an answer on September 10, 2007. (Document # 25). Based on the above, defendants' answer was timely.

Therefore, it is recommended that plaintiff's motion for default judgment (document #28) be DENIED in that defendants responded in a timely fashion pursuant to the Order granting an extension of time.

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#### CONCLUSION

For the reasons set forth herein, it is RECOMMENDED that the petitioner's motion for default judgment (document #28) be DENIED.

Respectfully submitted,

s/Thomas E. Rogers, III  
Thomas E. Rogers, III  
United States Magistrate Judge

December 18 ,2007  
Florence, South Carolina

**The parties' attention is directed to the important information on the attached notice.**